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OCT 18 2002

October 15, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

EX PARTE PRESENTATION

**Re: Implementation of the Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128;
IXC Over-Recovery of Compensation Payments**

Dear Ms. Dortch:

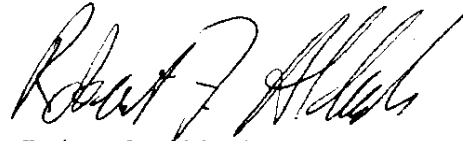
In responding to the attempts by AT&T, WorldCom, and Sprint to support their claims that they under-recovered their payphone compensation costs during the Interim Period (November 7, 1996 – October 6, 1997) and/or the Intermediate Period (October 7, 1997 – April 21, 1999), the American Public Communications Council (“APCC”) has pointed out that about 3250 million in interstate access charge payments have been saved each year by interexchange carriers (“IXCs”) as a result of the replacement of local exchange carriers’ interstate payphone subsidies with the dial-around compensation system, pursuant to Section 276 of the Communications Act, 47 U.S.C. §276(b)(1)(B). The IXCs have not disputed the accuracy of the \$250 million figure (only whether it is appropriate to offset the \$250 million against their claimed compensation costs). Nevertheless, to prevent possible uncertainty about the source of the 5250 million figure, APCC hereby clarifies that the \$2.50 million figure was developed from data in FCC records, and is corroborated by an ex parte letter submitted by AT&T in this proceeding, dated April 11, 1997, in which AT&T stated:

As the attached chart shows, the RBOCs and major independent LECs removed approximately \$240 million in costs from their interstate rates as a result of the reclassification of their payphone equipment.

See Attachment I to this ex parte letter, at 2, and attached chart. As AT&T’s \$240 million estimate included only the Regional Bell Operating Companies, GTE, and Anchorage Telephone Utility, it is reasonable to conclude that other LECs such as Sprint and TDS accounted for at least an additional \$10 million in annual access charge reductions.

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Sincerely,



Robert F. Aldrich

RFA/nw

Enclosure

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ATTACHMENT 1

**AT&T's Ex Parte Letter
Estimating Access Charge Reductions
From Removal of LEC Payphone Costs**



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April 11, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: CC Docket No. 96-128

Dear **Mr.** Caton:

This letter responds to the April 10, 1997 letter from Michael Kellogg, counsel for the RBOC Payphone Coalition, to Mary Beth Richards, Deputy Bureau Chief, Common Carrier Bureau. In that letter, the RBOC Coalition requested that the Bureau extend the waiver in its April 4 Order to include a waiver of the time within which LECs must have effective cost-based intrastate tariffs for basic payphone lines.

There is no basis for the RBOCs' claim that they did not understand that basic payphone tariffs had to comply with the Commission's "new services" test. Paragraph 146 of the Commission's September 20, 1996 Report and Order states:

"[W]e require that incumbent LEC provision of coin transmission services on an unbundled basis be treated as a new service under the Commission's price cap rules. . . . [W]e conclude that the new services test is necessary to ensure that central office coin services are priced reasonably."

That paragraph also specifically requires LECs to file cost support for such services. Moreover, paragraph 147 of the Report and Order concludes that 'Computer III' tariff procedures and pricing are more appropriate for basic payphone services provided by LECs to other payphone providers" and that "any inconsistent state requirements with regard to this matter are preempted." Nevertheless, AT&T takes no position on the merits of the RBOCs' request, provided that all necessary cost-based tariffs are in place within the waiver period established by the Bureau's April 4, 1997 Order.

AT&T's principal concern, however, is with **an issue** for which the RBOCs have not sought -- and the Bureau has not granted -- any waiver. In the Bureau's April 4 Order (¶ 30), the Bureau restated the Commission's earlier conclusion that **LECs** are not entitled to receive payphone compensation until the 'states ensure that payphone costs for unregulated equipment and subsidies [are] removed from the [LECs'] intrastate local exchange service and exchange access service rates (emphasis added).'" For the reasons described below, AT&T believes it is critical that the states affirmatively indicate they have completed this responsibility before **LECs** are entitled to receive any payphone compensation.

Section 276 clearly provides that payphone compensation for **LECs** is to be in lieu of any subsidies that the LECs currently receive to suppon their payphone operations. Section 276(b)(1)(B) specifically states that the Commission "shall take all necessary action. . . to discontinue the intrastate and interstate carrier access charge payphone service elements . . . and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a [payphone] compensation plan." Thus, it is indisputable, both under the statute and the Commission's Payphone Orders, that LECs may not receive any form of payphone compensation until all such subsidies have been terminated.'

The Commission's Orders required LECs to remove all intrastate payphone subsidies by April 15, but there is virtually no evidence that the LECs have done so. As the attached chart shows, the RBOCs and major independent LECs removed approximately \$240 million in costs from their interstate rates as a result of the reclassification of their payphone equipment. Using ordinary separations principles, the reclassification of such equipment should have resulted in a reduction of about \$720 million in intrastate costs at the same time.' The chart shows that there is a wide gap between the expected reductions -- which were anticipated and required by Section 276 -- and evidence of actual intrastate rate reductions (to date less than \$20 million). Moreover, with very few exceptions, LECs do not appear even to have asked the states to consider this important matter.

¹ See also April 4 Order, ¶ 12 ("the Payphone Reclassification Proceeding required states to ensure that payphone costs for unregulated equipment and subsidies are removed from the intrastate local exchange service and exchange access service rates").

² The RBOCs concurred with this view last week in heir April 7 brief before the D.C. Circuit in connection with the appeals of the Commission's Payphone Orders, stating that "the 1996 Act required the FCC to 'discontinue' this . . . system of 'intrastate' and 'interstate' subsidies for payphones 'in favor of a compensation plan.'" Illinois Public Telecommunications Association v. FCC, Case No. 96-1394, Initial Brief for the RBOC and NCTA Intervenors, p. 2.

³ Separations rules generally require a 25%/75% allocation of costs between the interstate and intrastate jurisdictions.

Given the wide and unexplained gap between the reasonably expected rate impacts of the removal of LEC payphone equipment from their regulated accounts and recent actual intrastate rate reductions. LECs should not be permitted to self-certify that their "states [have] ensure[d]" that intrastate payphone subsidies have been eliminated. In fact, the available evidence suggests that LECs have not removed intrastate payphone subsidies. Accordingly, the Commission should reiterate that a LEC has not fulfilled its statutory obligation -- and is not entitled to receive payphone compensation -- until it has provided proof of state action verifying the LEC's compliance with Section 276.

Specifically, the Commission should make it clear that no LEC is entitled to receive payphone compensation in any state⁴ until (1) it provides evidence that its state commission has actually considered these matters and (2) the state has affirmatively determined that all payphone subsidies have been eliminated from intrastate rates. Until such time, of course, LECs should be permitted to receive their current payphone subsidies, both interstate and intrastate.⁵

Any other procedural solution would create chaos, both in the marketplace and in the regulatory arena. Major IXC's face significant cost increases as soon as LEC payphones become eligible for payphone compensation. In the aggregate, IXC's will owe LEC PSP's over \$80 million in increased payphone compensation during each month of the interim compensation period, and carriers must plan rate actions necessary to cover these additional expenses.⁶ **Unless** there is reasonable certainty **as to** when these increases will take effect, carriers will have **to** assume that their liability may later be judged to have accrued beginning April 16, even though virtually no LECs will have fulfilled the Commission's (and the statute's) requirements by that time. Although carriers can make future rate adjustments to reflect reductions in payphone compensation, it is most desirable for customers to avoid rate increases until the LECs have fulfilled their obligations. It should also be recognized that the present uncertainty does not result from any action by **IXCs** or their customers. Rather, it is solely the result of the LECs' failure to take actions that **were** mandated by Section **276** and by Commission Orders that were issued last fall.

⁴ The Order (¶ 33) recognizes that compliance with the intrastate aspects of the Commission's Payphone Orders **must** be decided on a state-by-state basis.

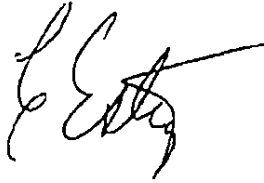
⁵ Accordingly, the Commission **should** defer the effective **date** of (or permit LECs to defer) LEC interstate **access** tariff reductions to coincide with **the** date **that** the LEC provides proof **that** its state commission has verified **removal** of **all** payphone subsidies.

⁶ The Commission's Report and Order (¶ 83) and its Order on Reconsideration (189) both assume **that IXC's** may **pass** such additional costs on to their customers.

In addition. Lack of clear guidance now will also likely lead to scores, if not hundreds, of FCC formal complaints between LECs and IXCs over the time at which individual LECs become entitled to receive interim compensation in each state. Most of these disputes could be avoided by requiring the LECs to obtain state verification of their compliance with the statute before they become eligible to receive payphone compensation.

The available evidence strongly indicates that the LECs have not yet removed all payphone subsidies. If the LECs are permitted -- contrary to law and the Commission's Orders -- to receive payphone compensation before these subsidies are eliminated, they will lose all incentives to lower their intrastate rates to the extent required. The procedure suggested above will not only provide LECs with the appropriate incentives, it will also enable them to qualify for payphone compensation as soon as they demonstrate compliance with the Commission's Orders.

Yours truly,



attachment

copy 10:

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Michael Pryor
James Schlichting
Blaise Scinto
Anne Stevens
Richard Welch
Christopher Wright
Dan Gonzalez

STATE	LEC	LEC CPE Costs INTERSTATE AS FILED (4000's)	LEC CPE Costs INTRASTATE ESTIMATED (see end notes) (1000's)	AS FILED STATE RATE REDUCTIONS (1000's)
ALABAMA	GTE	\$127	\$382	\$0
ALABAMA	GTE-C	\$82	\$247	\$0
ALASKA	ATU	NECA	\$1,302	\$400
ALASKA	GTE	\$41	\$147	\$66
ALL	BELL SOUTH	\$39,381	\$118.142	\$18.200
ALL	US WEST	\$12.416	\$37.248	\$0
ARIZONA	GTE-C	\$9	\$26	(Small)
ARKANSAS	S.WEST	\$3,098	\$9,294	\$0
ARKANSAS	GTE	\$97	\$290	\$0
ARKANSAS	GTE-C	\$114	\$343	\$0
CALIFORNIA	GTE	\$4,698	\$14,095	\$0
CALIFORNIA	GTE-WC	\$64	\$192	\$32
CALIFORNIA	GTE-C	\$524	\$1,572	\$127
CALIFORNIA	PACBELL	\$18,774	\$56.322	\$0
DC	BELL ATLAN.	\$1,800	\$5.400	\$0
DELAWARE	BELL ATLAN.	\$664	\$1,992	\$0
FLORIDA	GTE	\$2,894	\$8,683	\$0
HAWAII	GTE	\$1,795	\$5,385	\$0
IDAHO	GTE	\$125	\$374	\$0
ILLINOIS	AMERITECH	\$7,936	\$23,808	\$0
ILLINOIS	GTE	\$485	\$1,455	\$0
ILLINOIS	GTE-A	\$44	\$133	
ILLINOIS	GTE-C	\$113	\$339	\$0
INDIANA	AMERITECH	\$2,402	\$7.206	\$0
INDIANA	GTE	\$671	\$2,014	\$0
INDIANA	GTE-A	\$7	\$21	(Small)
INDIANA	GTE-C	\$129	\$388	\$0
IOWA	GTE	\$3	\$9	\$0

STATE	LEC	LEC CPE Costs INTERSTATE AS FILED (1000's)	LEC CPE Costs INTRASTATE ESTIMATED (see end notes) (1000's)	AS FILED STATE RATE REDUCTIONS (1000's)
IOWA	GTE-C	\$8	\$25	\$0
KANSAS	S WEST	\$3,762	\$11,286	\$0
KENTUCKY	GTE	\$417	\$1,251	\$0
KENTUCKY	GTE-C	\$47	\$141	\$0
MAINE	NYNEX	\$1,107	\$3,321	\$0
MARYLAND	BELL ATLAN.	\$4,928	\$14,784	\$0
MASS	NYNEX	\$6,076	\$18,228	\$0
MICHIGAN	AMERITECH	\$6,818	\$20,454	\$0
MICHIGAN	GTE	\$598	\$1,793	\$0
MICHIGAN	GTE-A	\$65	\$195	\$0
MICRONESIA	GTE	\$13	\$39	(Unknown)
MINNESOTA	GTE	\$1	\$3	\$0
MINNESOTA	GTE-C	\$83	\$248	\$0
MISSOURI	S.WEST	\$8,250	\$24,750	\$0
MISSOURI	GTE	\$158	\$473	\$0
MISSOURI	GTE-C	\$276	\$027	\$0
N. HAMPSH	NYNEX	51.167	\$3.501	\$0
NEBRASKA	GTE	\$32	\$96	\$0
NEVADA	NEV. BELL	\$784	\$2,352	\$0
NEVADA	GTE-C	541	\$123	\$0
NEW JERSEY	BELL ATLAN.	\$14,705	\$44,115	\$0
NEW MEXICO	GTE	\$25	\$75	\$0
NEW MEXICO	GTE-C	\$28	\$85	\$0
NEWYORK	NYNEX	\$31,284	\$93,852	\$0
NO. CAR	GTE	\$175	\$525	\$0
NO. CAR.	GTE-C	\$82	\$245	\$0

STATE	LEC	LEC CPE Costs INTERSTATE AS FILED (1000's)	LEC CPE Cost5 INTRASTATE ESTIMATED (see end notes) (1000's)	AS FILED STATE RATE REDUCTIONS (1000's)
OHIO	AMERITECH	\$5,979	517,937	\$0
OHIO	GTE	\$738	\$2.215	\$0
OKLAHOMA	S.WEST	\$4,642	\$13,926	\$0
OKLAHOMA	GTE	\$108	5323	\$0
OREGON	GTE	\$297	\$890	\$0
PENNSYLV.	GTE	5408	\$1,223	\$0
PENNSYLV.	GTE-C	\$81	\$242	\$0
PENNSYLV.	BELL ATLAN	\$10.242	\$30.726	\$0
RHODE ISL	NYNEX	\$838	\$2,514	\$0
SO. CAR.	GTE	\$322	\$967	\$0
SO. CAR.	GTE-C	\$8	\$23	\$0
TEXAS	S.WEST	\$24,899	\$74.697	\$0
TEXAS	GTE	\$1,392	\$4.177	\$0
TEXAS	GTE-C	\$89	\$268	\$0
VERMONT	NYNEX	\$792	\$2,376	\$0
VIRGINIA	BELL ATLAN	\$4,127	\$12.381	\$0
VIRGINIA	GTE	\$29	586	\$0
VIRGINIA	GTE-C	\$494	\$1,482	\$0
WASHING.	GTE	\$300	\$899	\$0
WASHING.	GTE-C	\$92	\$276	\$0
WEST VIRG.	BELL ATLAN	\$1,348	\$4,044	\$0
WISCONSIN	AMERITECH	\$3.179	\$9.537	\$0
WISCONSIN	GTE	\$252	\$755	\$0
TOTAL		5240,076	\$721.560	\$18,826

NOTES:

(1) The CPE costs exclude all new regulated revenue amounts that will flow to the LEC from its payphone affiliate(s). The RBOC Coalition estimated that their regulated entities would receive an additional \$683.76 M. from these affiliates, virtually all of which will be intrastate revenues. (See Page 5, RBOC Coalition Ex-Parte dated August. 12, 1996)

- (2) The AMERITECH revenue requirement is per transmittal # 1055
- (3) The GTE and GTE-Alltel (GTE-A) revenue requirement is per GTE transmittal # 1085.
GTE-CONTEL (GTE-C) is per transmittal # 201
- (4) BELL ATLANTIC revenue requirement is per transmittal # 931
- (5) BELL SOUTH revenue requirement is per transmittal # 385
- (6) SOUTHWESTERN BELL revenue requirement is per transmittal # 2608
- (7) NYNEX revenue requirement is per transmittal # 443
- (8) PACIFIC BELL revenue requirement is per transmittal # 1905
- (9) NEVADA BELL revenue requirement is per transmittal # 223
- (8) NYNEX - Transmittal #443
- (9) US WEST revenue requirement is per transmittal # 823. AT&T believes that
US WEST has recently filed to reduce some rates in Oregon. At this time we are unable to determine
the magnitude of the filing.